

ORDINANCE NO. 772

AN ORDINANCE IMPOSING A TAX UPON THE PRIVILEGE OF TRANSIENT OCCUPANCY AND PROVIDING FOR THE COLLECTION THEREOF

The City Council of the City of Lodi does ordain as follows:

Section 1. Title. This ordinance shall be known as the "Uniform Transient Occupancy Tax Ordinance of the City of Lodi."

Section 2. Definitions. Except where the context otherwise requires, the definitions given in this section govern the construction of this ordinance:

(a) Person. "Person" means any individual, firm, partnership, joint venture, association, social club, fraternal organization, joint stock company, corporation, estate, trust, business trust, receiver, trustee, syndicate, or any other group or combination acting as a unit.

(b) Hotel. "Hotel" means any structure, or any portion of any structure, which is occupied or intended or designed for occupancy by transients for dwelling, lodging or sleeping purposes, and includes any hotel, inn, tourist home or house, motel, studio hotel, bachelor hotel, lodging house, rooming house, apartment house, dormitory, public or private club, mobilehome or house trailer at a fixed location, or other similar structure or portion thereof.

(c) Occupancy. "Occupancy" means the use or possession, or the right to the use or possession of any room or rooms or portion thereof, in any hotel for dwelling, lodging or sleeping purposes.

(d) Transient. "Transient" means any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions

of calendar days as full days. Any such person so occupying space in a hotel shall be deemed to be a transient until the period of thirty (30) days has expired unless there is an agreement in writing between the operator and the occupant providing for a longer period of occupancy. In determining whether a person is a transient, uninterrupted periods of time extending both prior and subsequent to the effective date of this ordinance may be considered.

(e) Rent. "Rent" means the consideration charged, whether or not received, for the occupancy of space in a hotel valued in money, whether to be received in money, goods, labor or otherwise, including all receipts, cash, credits and property and services of any kind or nature, without any deduction therefrom whatsoever.

(f) Operator. "Operator" means the person who is proprietor of the hotel, whether in the capacity of owner, lessee, sublessee, mortgagee in possession, licensee, or any other capacity. Where the operator performs his functions through a managing agent of any type or character other than an employee, the managing agent shall also be deemed an operator for the purposes of this ordinance and shall have the same duties and liabilities as his principal. Compliance with the provisions of this ordinance by either the principal or the managing agent shall, however, be considered to be compliance by both.

(g) Tax Administrator. "Tax Administrator" means the Director of Finance of the City of Lodi.

Section 3. Tax Imposed. For the privilege of occupancy in any hotel, each transient is subject to and shall pay a tax in the amount of four per cent (4%) of the rent charged by the operator. Said tax constitutes a debt owned by the transient to the city which is extinguished only by payment to the operator or to the city. The transient shall pay the tax to the operator of the hotel

at the time the rent is paid. If the rent is paid in installments, a proportionate share of the tax shall be paid with each installment. The unpaid tax shall be due upon the transient's ceasing to occupy space in the hotel. If for any reason the tax due is not paid to the operator of the hotel, the Tax Administrator may require that such tax shall be paid directly to the Tax Administrator.

Section 4. Exemptions. No tax shall be imposed upon:

(a) Any person as to whom, or any occupancy as to which, it is beyond the power of the city to impose the tax herein provided;

(b) Any federal or State of California officer or employee when on official business;

(c) Any officer or employee of a foreign government who is exempt by reason of express provision of federal law or international treaty.

No exemption shall be granted except upon a claim therefor made at the time rent is collected and under penalty of perjury upon a form prescribed by the Tax Administrator.

Section 5. Operator's Duties. Each operator shall collect the tax imposed by this ordinance to the same extent and at the same time as the rent is collected from every transient. The amount of tax shall be separately stated from the amount of the rent charged, and each transient shall receive a receipt for payment from the operator. No operator of a hotel shall advertise or state in any manner, whether directly or indirectly, that the tax or any part thereof will be assumed or absorbed by the operator, or that it will not be added to the rent, or that, if added, any part will be refunded except in the manner hereinafter provided.

Section 6. Registration. Within thirty (30) days after the effective date of this ordinance, or within thirty (30) days after commencing business, whichever is later, each operator of any hotel

renting occupancy to transients shall register said hotel with the Tax Administrator and obtain from him a "~~Transient~~ Occupancy Registration ~~Certificate~~" to be at all times posted in a conspicuous place on the premises. Said certificate shall, among other things, state the following:

- (1) The name of the operator;
- (2) The address of the hotel;
- (3) The date upon which the certificate was issued;
- (4) "~~This~~ Transient Occupancy Registration Certificate

signifies that the person named on the face hereof has fulfilled the requirements of the Uniform Transient Occupancy Tax Ordinance by registering with the Tax Administrator for the purpose of collecting from transients the Transient Occupancy Tax and remitting said tax to the Tax Administrator. This certificate does not authorize any person to conduct any unlawful business or to conduct any lawful business in an ~~unlawful~~ manner, nor to operate a hotel without strictly complying with all local applicable laws, including but not limited to those requiring a permit from any board, commission, department ~~or~~ office of this city. This certificate does not constitute a ~~permit~~."

Section 7. Reporting and Remitting. Each operator shall, on ~~or~~ before the last day of the month following the close of each calendar quarter, or at the close of any shorter reporting period which ~~may~~ be established by the Tax Administrator, make a return to the Tax Administrator, on forms provided by him, of the total rents charged and received and the amount of tax collected for transient occupancies. At the time the return is filed, the full amount of the tax collected shall be ~~remitted~~ to the Tax Administrator. The Tax Administrator ~~may~~ establish shorter reporting periods ~~for~~ any certificate holder if he deems ~~it~~ necessary

in order to insure collection of the tax and he may require further information in the return. Returns and payments are due immediately upon cessation of business for any reason. All taxes collected by operators pursuant to this ordinance shall be held in trust for the account of the city until payment thereof is made to the Tax Administrator.

Section 8. Penalties and Interest.

(a) Original Delinquency. Any operator who fails to remit any tax imposed by this ordinance within the time required shall pay a penalty of 10% of the amount of the tax in addition to the amount of the tax.

(b) Continued Delinquency. Any operator who fails to remit any delinquent remittance on or before a period of thirty (30) days following the date on which the remittance first became delinquent shall pay a second delinquency penalty of 10% of the amount of the tax in addition to the amount of the tax and the 10% penalty first imposed.

(c) Fraud. If the Tax Administrator determines that the non-payment of any remittance due under this ordinance is due to fraud, a penalty of 25% of the amount of the tax shall be added thereto in addition to the penalties stated in subparagraphs (a) and (b) of this section.

(d) Interest. In addition to the penalties imposed, any operator who fails to remit any tax imposed by this ordinance shall pay interest at the rate of one-half of 1% per month or fraction thereof on the amount of the tax, exclusive of penalties, from the date on which the remittance first became delinquent until paid.

(e) Penalties Merged With Tax. Every penalty imposed and such interest as accrues under the provisions of this section shall become a part of the tax herein required to be paid.

Section 9. Failure to Collect and Report Tax. Determina-
tion of Tax by Tax Administrator. If any operator shall fail or
refuse to collect said tax and to make, within the time provided
in this ordinance, any report and remittance of said tax or any
portion thereof required by this ordinance, the Tax Administrator
shall proceed in such manner as he may deem best to obtain facts
and information on which to base his estimate of the tax due.
As soon as the Tax Administrator shall procure such facts and
information as he is able to obtain upon which to base the assess-
ment of any tax imposed by this ordinance and payable by any
operator who has failed or refused to collect the same and to
make such report and remittance, he shall proceed to determine
and assess against such operator the tax, interest and penalties
provided for by this ordinance. In case such determination **is**
made, the Tax Administrator shall give a notice of the amount
so assessed by serving **it** personally **or by** depositing **it** in the
United States mail, postage prepaid, addressed to the operator
so assessed at his last **known** place of address. Such operator
may within ten (10) days after the serving or mailing of such
notice make application **in** writing to the Tax Administrator for
a hearing on the amount assessed. If application by the operator
for a hearing **is** not made within the time prescribed, the tax,
interest and penalties, if any, determined by the Tax Administrator
shall become final and conclusive and **immediately** due and payable.
If such application **is** made, the Tax Administrator shall give not
less than five (5) days written notice in the manner prescribed
herein to the operator to **show cause** at a time and place fixed in
said notice **why** said amount specified therein should not be fixed
for such tax, interest and penalties. At such hearing, the operator
may appear and offer evidence **why** such specified tax, interest and
penalties should not be so fixed. After such hearing the Tax Ad-
ministrator shall determine the proper tax to be remitted and shall

thereafter give written notice to the person in the manner prescribed herein of such determination and the amount of such tax, interest and penalties. The amount determined to be due shall be payable after fifteen (15) days unless an appeal is taken as provided in Section 10.

Section 10. Appeal. Any operator aggrieved by any decision of the Tax Administrator with respect to the amount of such tax, interest and penalties, if any, may appeal to the Council by filing a notice of appeal with the City Clerk within fifteen (15) days of the serving or mailing of the determination of tax due. The Council shall fix a time and place for hearing such appeal, and the City Clerk shall give notice in writing to such operator at his last known place of address. The findings of the Council shall be final and conclusive and shall be served upon the appellant in the manner prescribed above for service of notice of hearing. Any amount found to be due shall be immediately due and payable upon the service of notice.

Section 11. Records. It shall be the duty of every operator liable for the collection and payment to the city of any tax imposed by this ordinance to keep and preserve, for a period of three years, all records as may be necessary to determine the amount of such tax as he may have been liable for the collection of and payment to the city, which records the Tax Administrator shall have the right to inspect at all reasonable times.

Section 12. Refunds.

(a) Whenever the amount of any tax, interest or penalty has been overpaid or paid more than once or has been erroneously or illegally collected or received by the city under this ordinance, it may be refunded as provided in subparagraphs (b) and (c) of this section provided a claim in writing therefor, stating under penalty of perjury the specific grounds upon which the claim is

founded, is filed with the Tax Administrator within three years of the date of payment. The claim shall be on forms furnished by the Tax Administrator.

(b) An operator may claim a refund or take as credit against taxes collected and remitted the amount overpaid, paid more than once or erroneously or illegally collected or received when it is established in a manner prescribed by the Tax Administrator that the person from whom the tax has been collected was not a transient; provided, however, that neither a refund nor a credit shall be allowed unless the amount of the tax so collected has either been refunded to the transient or credited to rent subsequently payable by the transient to the operator.

(c) A transient may obtain a refund of taxes overpaid or paid more than once or erroneously or illegally collected or received by the city by filing a claim in the manner provided in subparagraph (a) of this section, but only when the tax was paid by the transient directly to the Tax Administrator, or when the transient having paid the tax to the operator, established to the satisfaction of the Tax Administrator that the transient has been unable to obtain a refund from the operator who collected the tax.

(d) No refund shall be paid under the provisions of this section unless the claimant establishes his right thereto by written records showing entitlement thereto.

Section 13. Actions to Collect. Any tax required to be paid by any transient under the provisions of this ordinance shall be deemed a debt owed by the transient to the city. Any such tax collected by an operator which has not been paid to the city shall be deemed a debt owed by the operator to the city. Any person owing money to the city under the provisions of this ordinance shall be liable to an action brought in the name of the City of Lodi for the recovery of such amount.

Section 14. Violations; Misdemeanor. Any operator or other person who fails or refuses to register as required herein, or to furnish any return required to be made, or who fails or refuses to furnish a supplemental return or other data required by the Tax Administrator, or who renders a false or fraudulent return or claim, is guilty of a misdemeanor. Any person required to make, render, sign or verify any report or claim who makes any false or fraudulent report or claim with intent to defeat or evade the determination of any amount due required by this ordinance to be made, is guilty of a misdemeanor.

Section 15. Effective Date. This ordinance shall be effective thirty (30) days from and after the date of its passage except that the tax imposed by this ordinance shall become operative and be imposed on January 1, 1965, and shall not apply prior to said date.

Approved this 16th day of September, 1964.

Fred M. Brown
J. M. BROWN, Mayor

Beatrice Garibaldi
Attest: BEATRICE GARIBALDI
City Clerk

City of California,

County of San Joaquin,

I, the Mayor of the City of Lodi, do hereby certify that Ordinance No. 772 was introduced at a regular meeting of the City Council of the City of Lodi held September 2, 1964, and was thereafter passed, adopted and ordered to be published at a regular meeting held September 16, 1964, by the following vote:

AYES: Councilmen - CULBERTSON, DOW and BROWN

NOES: Councilmen - TEN and WALTON

Abstentions: Council - None

I hereby certify that Ordinance No. 772 was approved and signed by the Mayor on the date of its publication and has been published pursuant to law.

Beatrice Garibaldi
City Clerk